



CHAIRMAN

Federal Communications Commission

Washington, D.C

September 15, 2003

The Honorable George Allen
United States Senate
204 Russell Senate Office Building
Washington, D C 20510

Dear Senator Allen:

Thank you for your letter of August 15, 2003, regarding the Commission's recent amendment to its rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"). In your correspondence, you express concern about the Commission's decision requiring written consent before sending advertising faxes.

On September 18, 2002, the Commission released its *Notice of Proposed Rulemaking* ("NPRM") seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. Specifically, the *NPRM* sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

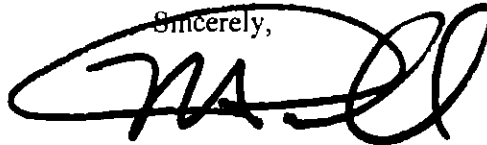
The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's *Report and Order* released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

As we explained in the *Report and Order*, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules initially were scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July *Report and Order*, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the *Report and Order* indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. This extension will allow senders of such advertisements additional time to obtain the necessary permission before the new rules become effective. In addition, it will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. I am enclosing a copy of the Commission's *Order on Reconsideration*, released on August 18, 2003.

I appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Powell', enclosed within a large, loopy oval shape.

Michael K. Powell

Enclosure

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Rules and Regulations Implementing the) CG Docket No 02-278
Telephone Consumer Protection Act of 1991)
)
)
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)
)

ORDER ON RECONSIDERATION

Adopted: August 18, 2003

Released: August 18, 2003

By the Commission:

1 On July 3, 2003, the Federal Communications Commission (Commission) released a Report and Order revising many of its telemarketing and facsimile advertising rules pursuant to the Telephone Consumer Protection Act of 1991 (TCPA).¹ Pursuant to Section 1108 of the Commission's rules,² on our own motion, we issue this limited reconsideration of the *Report and Order* and extend, until January 1, 2005, the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. We also extend, until January 1, 2005, the effective date of amended rule 47 C.F.R. § 64.1200(a)(3)(i).³

2. In the *Report and Order*, the Commission reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers.⁴ The Commission determined that the established business relationship would no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements.⁵ Instead, the Commission

¹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No 02-278, FCC 03-153, Report and Order (rel. July 3, 2003) (*Report and Order*). A summary of this Report and Order was published in the Federal Register on July 25, 2003 (68 Fed. Reg. 44144).

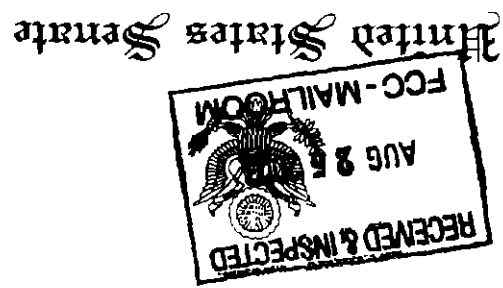
² 47 C.F.R. § 1.108.

³ Amended rule 47 C.F.R. § 64.1200(a)(3)(i) provides that "a facsimile advertisement is not 'unsolicited' if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender."

⁴ *Report and Order* at para. 189.

⁵ *Id.*

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The Honorable Michael K. Powell

Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell:

On July 25, 2003, the FCC published regulations in the Federal Register titled "Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991." While the bulk of these regulations deal with the new "Do Not Call" guidelines, they contain a very significant change in the rules governing commercial facsimile transmissions. These particular rules regarding faxes are to take effect August 25, 2003.

Under the existing rules, there is an exception from the unsolicited fax prohibition if there is an "existing business relationship" between the parties involved. This rule has worked reasonably well for over a decade, and has allowed normal and necessary commerce to take place while still respecting the desires of consumer to avoid unnecessary faxes.

The new regulations, however, repeal this long standing exception. Instead, the party that is sending a commercial fax to an individual or business must get prior written permission and keep it on file. This could have a tremendous chilling effect on commerce, and would create an unreasonable record keeping burden on businesses and associations.

I have heard from numerous constituents in opposition to these proposed new fax regulations. I believe that these concerns are well founded, and want the Commission to fully understand the impact of the new rules on commerce and necessary communications.

25 AUG 2003 ROOM

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Chairman Michael Powell
August 15, 2003
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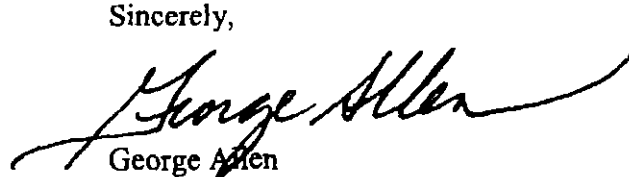
One of the primary concerns of my constituents is the expansion of the private right of action that would accompany the new rules. As you know, under existing law, private citizens can take action in State court against senders of unsolicited faxes, with potential penalties as high as \$1,500 per fax. This has generated numerous lawsuits frivolous in nature, punishing businesses and associations who make honest errors. The new rules would set a new standard, prior written approval, which will only increase the volume of frivolous lawsuits. Even if someone specifically requests information to be faxed to them, the only sure defense in a court of law for an entity faxing the information would be a signed permission statement. This is an unreasonable standard to subject our nation's businesses and associations.

While I have no objections to the provisions of the Report and Order governing the "Do Not Call" registry, I respectfully request that the Commission stay the implementation of the regulations governing facsimile transmissions before they take effect on August 25, 2003. During this stay, I hope that both the Commission and Congress would examine rules governing faxes that are more reasonable and that do not unnecessarily restrict commerce.

Thank you for all your outstanding leadership. Please let me know if you need any additional information on this pressing issue

With kind personal regards, I remain

Sincerely,

A handwritten signature in black ink, reading "George Allen". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

George Allen